

ACT No. 2010 - 764

SB14

125187-2

By Senators Taylor, Brooks, Pittman, Allen, Holtzclaw,
Whatley, Williams, Glover, Orr, Bussman, Scofield, Marsh, and
Brewbaker

RFD: Constitution, Campaign Finance, Ethics, and Elections

First Read: 08-DEC-10

A.M.



SB14

ENROLLED, An Act,

Relating to the Alabama Code of Ethics; to amend Section 36-25-1 and Section 36-25-7, Code of Alabama 1975, revising certain defined terms and adding additional terms and regulating certain conduct; to add Section 36-25-5.5 to the Code of Alabama 1975, regulating lobbyists, subordinates of lobbyists, and principals; and requiring the State Ethics Commission to report to the Legislature what other states have done to strengthen their state ethics law.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-25-1 of the Code of Alabama 1975, is amended to read as follows:

"§36-25-1.

"Whenever used in this chapter, the following words and terms shall have the following meanings:

"(1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director

1 member, employee, or holder of more than five percent of the
2 fair market value of the business.

3 "(3) CANDIDATE. This term as used in this chapter
4 shall have the same meaning ascribed to it in Section
5 17-22A-2.

6 "(4) COMMISSION. The State Ethics Commission.

7 "(5) COMPLAINT. Written allegation or allegations
8 that a violation of this chapter has occurred.

9 "(6) COMPLAINANT. A person who alleges a violation
10 or violations of this chapter by filing a complaint against a
11 respondent.

12 "(7) CONFIDENTIAL INFORMATION. A complaint filed
13 pursuant to this chapter, together with any statement,
14 conversations, knowledge of evidence, or information received
15 from the complainant, witness, or other person related to such
16 complaint.

17 "(8) CONFLICT OF INTEREST. A conflict on the part of
18 a public official or public employee between his or her
19 private interests and the official responsibilities inherent
20 in an office of public trust. A conflict of interest involves
21 any action, inaction, or decision by a public official or
22 public employee in the discharge of his or her official duties
23 which would materially affect his or her financial interest or
24 those of his or her family members or any business with which
25 the person is associated in a manner different from the manner

1 it affects the other members of the class to which he or she
2 belongs. A conflict of interest shall not include any of the
3 following:

4 "a. A loan or financial transaction made or
5 conducted in the ordinary course of business.

6 "b. An occasional nonpecuniary award publicly
7 presented by an organization for performance of public
8 service.

9 "c. Payment of or reimbursement for actual and
10 necessary expenditures for travel and subsistence for the
11 personal attendance of a public official or public employee at
12 a convention or other meeting at which he or she is scheduled
13 to meaningfully participate in connection with his or her
14 official duties and for which attendance no reimbursement is
15 made by the state.

16 "d. Any campaign contribution, including the
17 purchase of tickets to, or advertisements in journals, for
18 political or testimonial dinners, if the contribution is
19 actually used for political purposes and is not given under
20 circumstances from which it could reasonably be inferred that
21 the purpose of the contribution is to substantially influence
22 a public official in the performance of his or her official
23 duties.

24 "(9) DAY. Calendar day.

1 "(10) DEPENDENT. Any person, regardless of his or
2 her legal residence or domicile, who receives 50 percent or
3 more of his or her support from the public official or public
4 employee or his or her spouse or who resided with the public
5 official or public employee for more than 180 days during the
6 reporting period.

7 "(11) ECONOMIC DEVELOPMENT FUNCTION. Any function
8 reasonably and directly related to the advancement of a
9 specific, good-faith economic development or trade promotion
10 project or objective.

11 "(12) EDUCATIONAL FUNCTION. A meeting, event, or
12 activity held within the State of Alabama, or if the function
13 is predominantly attended by participants from other states,
14 held within the continental United States, which is organized
15 around a formal program or agenda of educational or
16 informational speeches, debates, panel discussions, or other
17 presentations concerning matters within the scope of the
18 participants' official duties or other matters of public
19 policy, (including social services and community development
20 policies) economic development or trade, ethics, government
21 services or programs, or government operations, and which,
22 taking into account the totality of the program or agenda,
23 could not reasonably be perceived as a subterfuge for a purely
24 social, recreational, or entertainment function.

1 "(13) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
2 spouse or a dependent of the public employee.

3 "(14) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
4 spouse, a dependent, an adult child and his or her spouse, a
5 parent, a spouse's parents, a sibling and his or her spouse,
6 of the public official.

7 "(15) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
8 Public or private corporations and authorities, including but
9 not limited to, hospitals or other health care corporations,
10 established pursuant to state law by state, county or
11 municipal governments for the purpose of carrying out a
12 specific governmental function. Notwithstanding the foregoing,
13 all employees, including contract employees, of hospitals or
14 other health care corporations and authorities are exempt from
15 the provisions of this chapter.

16 "(16) HOUSEHOLD. The public official, public
17 employee, and his or her spouse and dependents.

18 "(17) LAW ENFORCEMENT OFFICER. A full-time employee
19 of a governmental unit responsible for the prevention or
20 investigation of crime who is authorized by law to carry
21 firearms, execute search warrants, and make arrests.

22 "(18) LEGISLATIVE BODY. The Senate of Alabama, the
23 House of Representatives of Alabama, a county commission, city
24 council, city commission, town council, or municipal council
25 or commission, and any committee or subcommittee thereof.

1 "(19) LOBBY or LOBBYING. The practice of promoting,
2 opposing, or in any manner influencing or attempting to
3 influence the introduction, defeat, or enactment of
4 legislation before any legislative body; opposing or in any
5 manner influencing the executive approval, veto, or amendment
6 of legislation; or the practice of promoting, opposing, or in
7 any manner influencing or attempting to influence the
8 enactment, promulgation, modification, or deletion of
9 regulations before any regulatory body. The term does not
10 include providing public testimony before a legislative body
11 or regulatory body or any committee thereof.

12 "(20) LOBBYIST.

13 "a. The term lobbyist includes any of the following:

14 "1. A person who receives compensation or
15 reimbursement from another person, group, or entity to lobby.

16 "2. A person who lobbies as a regular and usual part
17 of employment, whether or not any compensation in addition to
18 regular salary and benefits is received.

19 "3. A consultant to the state, county, or municipal
20 levels of government or their instrumentalities, in any manner
21 employed to influence legislation or regulation, regardless
22 whether the consultant is paid in whole or part from state,
23 county, municipal, or private funds.

24 "4. An employee, a paid consultant, or a member of
25 the staff of a lobbyist, whether or not he or she is paid, who

1 regularly communicates with members of a legislative body
2 regarding pending legislation and other matters while the
3 legislative body is in session.

4 "b. The term lobbyist does not include any of the
5 following:

6 "1. An elected official on a matter which involves
7 that person's official duties.

8 "2. A person or attorney rendering professional
9 services in drafting bills or in advising clients and in
10 rendering opinions as to the construction and effect of
11 proposed or pending legislation, executive action, or rules or
12 regulations, where those professional services are not
13 otherwise connected with legislative, executive, or regulatory
14 action.

15 "3. Reporters and editors while pursuing normal
16 reportorial and editorial duties.

17 "4. Any citizen not expending funds as set out above
18 in paragraph a.3. or not lobbying for compensation who
19 contacts a member of a legislative body, or gives public
20 testimony on a particular issue or on particular legislation,
21 or for the purpose of influencing legislation and who is
22 merely exercising his or her constitutional right to
23 communicate with members of a legislative body.

1 "5. A person who appears before a legislative body,
2 a regulatory body, or an executive agency to either sell or
3 purchase goods or services.

4 "6. A person whose primary duties or
5 responsibilities do not include lobbying, but who may, from
6 time to time, organize social events for members of a
7 legislative body to meet and confer with members of
8 professional organizations and who may have only irregular
9 contacts with members of a legislative body when the body is
10 not in session or when the body is in recess.

11 "7. A person who is a member of a business,
12 professional, or membership organization by virtue of the
13 person's contribution to or payment of dues to the
14 organization even though the organization engages in lobbying
15 activities.

16 "8. A state governmental agency head or his or her
17 designee who provides and/or communicates information relating
18 to policy and/or positions affecting said governmental
19 agencies which they represent.

20 "(21) MINOR VIOLATION. Any violation of this chapter
21 in which the public official or public employee receives an
22 economic gain in an amount less than two hundred fifty dollars
23 (\$250) or the governmental entity has an economic loss of less
24 than two hundred fifty dollars (\$250).

"(22) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

"(23) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.

"(24) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

"(25) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

"(26) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the

1 state, county, or municipal level of government or their
2 instrumentalities, including governmental corporations. For
3 purposes of this chapter, a public official includes the
4 chairs and vice-chairs or the equivalent offices of each state
5 political party as defined in Section 17-16-2.

6 "(27) REGULATORY BODY. A state agency which issues
7 regulations in accordance with the Alabama Administrative
8 Procedure Act or a state, county, or municipal department,
9 agency, board, or commission which controls, according to rule
10 or regulation, the activities, business licensure, or
11 functions of any group, person, or persons.

12 "(28) REPORTING PERIOD. The reporting official's or
13 employee's fiscal tax year as it applies to his or her United
14 States personal income tax return.

15 "(29) REPORTING YEAR. The reporting official's or
16 employee's fiscal tax year as it applies to his or her United
17 States personal income tax return.

18 "(30) RESPONDENT. A person alleged to have violated
19 a provision of this chapter and against whom a complaint has
20 been filed with the commission.

21 "(31) STATEMENT OF ECONOMIC INTERESTS. A financial
22 disclosure form made available by the commission which shall
23 be completed and filed with the commission prior to April 30
24 of each year covering the preceding calendar year by certain
25 public officials and public employees.

1 "(32) SUPERVISOR. Any person having authority to
2 hire, transfer, suspend, lay off, recall, promote, discharge,
3 assign, or discipline other public employees, or any person
4 responsible to direct them, or to adjust their grievances, or
5 to recommend personnel action, if, in connection with the
6 foregoing, the exercise of the authority is not of a merely
7 routine or clerical nature but requires the use of independent
8 judgment.

9 "(33) THING OF VALUE.

10 "a. Any gift, benefit, favor, service, gratuity,
11 tickets or passes to an entertainment, social or sporting
12 event, unsecured loan, other than those loans and forbearances
13 made in the ordinary course of business, reward, promise of
14 future employment, or honoraria or other item of monetary
15 value.

16 "b. The term, thing of value, does not include any
17 of the following, provided that no particular course of action
18 is required as a condition to the receipt thereof:

19 "1. A contribution reported under Chapter 5 of Title
20 17 or a contribution to an inaugural or transition committee.

21 "2. Anything given by a family member of the
22 recipient under circumstances which make it clear that it is
23 motivated by a family relationship.

24 "3. Anything given by a friend of the recipient
25 under circumstances which make it clear that it is motivated

1 by a friendship and not given because of the recipient's
2 official position. Relevant factors include whether the
3 friendship preexisted the recipient's status as a public
4 employee, public official, or candidate and whether gifts have
5 been previously exchanged between them.

6 "4. Greeting cards, items, services with little
7 intrinsic value which are intended solely for presentation
8 (such as plaques, certificates, and trophies), promotional
9 items commonly distributed to the general public, and items or
10 services of de minimis value.

11 "5. Loans from banks and other financial
12 institutions on terms generally available to the public.

13 "6. Opportunities and benefits, including favorable
14 rates and commercial discounts, available to the public or to
15 a class consisting of all government employees.

16 "7. Rewards and prizes given to competitors in
17 contests or events, including random drawings, which are open
18 to the public.

19 "8. Anything that is paid for by a governmental
20 entity or an entity created by a governmental entity to
21 support the governmental entity or secured by a governmental
22 entity under contract, except for tickets to a sporting event
23 offered by an educational institution to anyone other than
24 faculty, staff, or administration of the institution.

1 "9. Anything for which the recipient pays full
2 value.

3 "10. Compensation and other benefits earned from a
4 non-government employer, vendor, client, prospective employer,
5 or other business relationship in the ordinary course of
6 employment or non-governmental business activities under
7 circumstances which make it clear that the thing is provided
8 for reasons unrelated to the recipient's public service as a
9 public official or public employee.

10 "11. Any assistance provided or rendered in
11 connection with a safety or a health emergency.

12 "12. Payment of or reimbursement for actual and
13 necessary transportation and lodging expenses, as well as
14 waiver of registration fees and similar costs, to facilitate
15 the attendance of a public official or public employee, and
16 the spouse of the public official or public employee, at an
17 educational function or widely attended event of which the
18 person is a primary sponsor. This exclusion applies only if
19 the public official or public employee meaningfully
20 participates in the event as a speaker or a panel participant,
21 by presenting information related to his or her agency or
22 matters pending before his or her agency, or by performing a
23 ceremonial function appropriate to his or her official
24 position; or if the public official's or public employee's

attendance at the event is appropriate to the performance of his or her official duties or representative function.

"13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function.

"14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event, such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.

"15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

"16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars (\$25) per meal with a limit of one hundred fifty dollars (\$150) per year; and not to exceed for a principal fifty dollars (\$50) per meal with a limit of two hundred fifty dollars (\$250) per year. Notwithstanding the lobbyist's limits herein shall not count against the

principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

"17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

"18. Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

"c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts

1 through inheritance received by a public employee or public
2 official.

3 "(34) VALUE. The fair market price of a like item if
4 purchased by a private citizen. In the case of tickets to
5 social and sporting events and associated passes, the value is
6 the face value printed on the ticket.

7 "(35) WIDELY ATTENDED EVENT. A gathering, dinner,
8 reception, or other event of mutual interest to a number of
9 parties at which it is reasonably expected that more than 12
10 individuals will attend and that individuals with a diversity
11 of views or interest will be present.

12 Section 2. Section 36-25-7 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§36-25-7.

15 "(a) No person shall offer or give to a public
16 official or public employee or a member of the household of a
17 public employee or a member of the household of the public
18 official and none of the aforementioned shall solicit or
19 receive anything for the purpose of influencing official
20 action, regardless of whether or not the thing solicited or
21 received is a thing of value.

22 "(b) No public official or public employee shall
23 solicit or receive anything for himself or herself or for a
24 family member of the public employee or family member of the
25 public official for the purpose of influencing official

1 action, regardless of whether or not the thing solicited or
2 received is a thing of value.

3 "(c) No person shall offer or give a family member
4 of the public official or family member of the public employee
5 anything for the purpose of influencing official action,
6 regardless of whether or not the thing offered or given is a
7 thing of value.

8 "(d) No public official or public employee, shall
9 solicit or receive any money in addition to that received by
10 the public official or public employee in an official capacity
11 for advice or assistance on matters concerning the
12 Legislature, lobbying a legislative body, an executive
13 department or any public regulatory board, commission or other
14 body of which he or she is a member. Notwithstanding the
15 foregoing, nothing in this section shall be construed to
16 prohibit a public official or public employee from the
17 performance of his or her official duties or
18 responsibilities."

19 Section 3. Section 36-25-5.5 is added to the Code of
20 Alabama 1975, to read as follows:

21 (a) No lobbyist, or subordinate of a lobbyist or
22 principal shall offer or provide a thing of value to a public
23 employee or public official or to a family member of the
24 public employee or family member of the public official; and
25 no public employee or public official or family member of the

1 public employee or family member of the public official shall
2 solicit or receive a thing of value from a lobbyist,
3 subordinate of a lobbyist or principal. Notwithstanding the
4 foregoing, a lobbyist or principal may offer or provide and a
5 public official, public employee, or candidate may solicit or
6 receive items of de minimis value.


7 (b) A lobbyist does not provide a thing of value,
8 for purposes of this section, merely by arranging,
9 facilitating, or coordinating with his or her principal that
10 is providing and paying for those items.

11 Section 4. The State Ethics Commission shall report
12 to the Legislature by the fifth legislative day of the 2011
13 Regular Session what other states have done to strengthen
14 their State Ethics Law.

15 Section 5. This act shall become effective 90 days
16 from the date of passage.



President and Presiding Officer of the Senate


Speaker of the House of Representatives

SB14

Senate 10-DEC-10

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 16-DEC-10

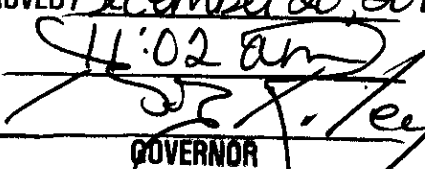
I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

McDowell Lee
Secretary

House of Representatives
Passed: 15-DEC-10, as amended

House of Representatives
Passed: 16-DEC-2010, as amended by Conference Committee Report.

By: Senator Taylor

APPROVED December 20, 2010
TIME 11:02 am

GOVERNOR